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SUBJECT: REVISED INSTRUCTION CABLE ON INITIATING ASSURANCE  
NEGOTIATIONS FOR THREE POSSIBLE RWANDAN REMOVALS

REF: A. A.STATE 165918

[1](#)B. B. KIGALI 915

[1](#)1. (SBU) THIS IS AN ACTION REQUEST: Post is requested to make the points in paragraphs 7 and 8 to appropriate interlocutor(s) in the Rwandan Government.

[1](#)2. (SBU) BACKGROUND: Rwandan citizens Leonidas Bimenyimana, Gregoire Nyaminani, and Francois Karake were brought to the United States in 2003 for criminal prosecution for the 1999 murder of two U.S. citizens in the Bwindi Impenetrable National Forest in Uganda. The attack in Bwindi, which resulted in the deaths of six other tourists and one Ugandan park guard, was carried out by the Liberation Army of Rwanda (ALIR), a U.S.-designated terrorist organization under the Terrorist Exclusion List (TEL). All three men are admitted members of ALIR, which has since changed its name to the Democratic Forces for the Liberation of Rwanda (FDLR).

[1](#)3. (SBU) On February 7, 2007, a U.S. District Court dismissed the criminal proceedings against these three individuals following an order suppressing previous statements made by them finding that they were coerced, in part, through torture in Rwanda. On February 12, 2007, these individuals were transferred to the custody of Department of Homeland Security's Immigration and Customs Enforcement (ICE). Once in ICE custody, DHS brought removal proceedings before an immigration judge (IJ) in Arlington, Virginia. On September 5, 2007, the IJ issued a written decision in Mr. Bimenyimana's case ordering him removed, but deferring his removal to Rwanda based upon a finding that it is more likely than not that he would be tortured if returned to Rwanda. Similar orders were issued in Mr. Nyaminani's case on September 27, 2007 and in Mr. Karake's case on December 3, [1](#)2007.

[1](#)4. (SBU) DHS A/S Myers wrote to Deputy Secretary Negroponte on October 18, 2007 requesting that the State Department assist in removing Bimenyimana, Nyaminani, and Karake. On December 7, 2007, the Deputy Secretary approved a letter from Ambassador Dailey, Coordinator for Counterterrorism, to ICE A/S Myers communicating the Department's intent to initiate discussions with the Government of Rwanda on the possibility of its providing to the United States credible, written assurances with respect to the treatment of Mr. Bimenyimana, Mr. Nyaminani and Mr. Karake if they were returned to Rwanda.

[1](#)5. (SBU) In a case unrelated to the three Bwindi Rwandans, on January 10, 2008 a U.S. District Court stopped the removal of an alien whose deferral of removal had been terminated based upon the receipt of diplomatic assurances from the Government of Egypt. The key finding in the decision was that, contrary to the current procedures set forth by regulation, diplomatic assurances regarding torture should be subjected to judicial review. The USG is appealing this decision. The appeal process will likely take many months. As this is the first case in which the use of confidential

assurances against torture in the immigration context has been litigated, it is likely that other aliens for whom we rely on diplomatic assurances to effect their removal will use this ruling to challenge that action in court. In light of this ruling and the pending nature of the U.S. government's appeal, there remains legal uncertainty in the United States whether aliens who are the subject of diplomatic assurances can ultimately be removed even if the assurances received are deemed to be credible by the Executive Branch.

¶16. (SBU) Per post's discussions with the Rwandan Justice Minister, the Department understands the GOR would prosecute Bimenyimana, Nyaminani and Karake should they be returned to Rwanda. We will need to seek written assurances from all ministries that would be responsible for having custody of them once returned to Rwanda.

¶17. (SBU) Post is requested to draw from the following points in discussions with appropriate Rwandan officials at the highest possible level to request written assurances at the Ministerial level or above with respect to the treatment of Mssrs. Bimenyimana, Nyaminani and Karake should they be returned to Rwanda:

--We appreciate the GOR's expressed willingness to provide written assurances that Mssrs. Bimenyimana, Nyaminani, and Karake would be treated humanely and will not be tortured if returned to Rwanda.

--While there are pending immigration proceedings associated with these men, we would like to initiate discussions with all appropriate GOR ministries to ensure that if we were to return them to Rwanda it would be done in accordance with U.S. immigration law and international treaty obligations.

--Accordingly, we ask that the GOR provide a list of all government ministries that could potentially have a role in handling these individuals if returned to Rwanda, as we will require written assurances from each ministry.

--In light of our obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and related considerations, the United States would need to receive written assurances from appropriate Government of Rwanda officials, at the ministerial level or higher, with respect to the treatment of Mssrs. Bimenyimana, Nyaminani and Karake if returned to Rwanda.

¶18. (SBU) Written assurances must include the following commitments from the Government of Rwanda:

--The Government of Rwanda will provide Mssrs. Bimenyimana, Nyaminani and Karake with all legal and procedural guarantees provided for under Rwanda's Constitution, Rwandan law and Rwanda's international legal obligations, including as a party to the International Covenant on Civil and Political Rights, and thereby protect these individuals from any and all forms of torture;

--The Government of Rwanda will not introduce any statement elicited through coercion, including but not limited to any statements made by Mssrs. Bimenyimana, Nyaminani and Karake between 2001 and 2003 to Rwandan and/or United States officials at Kami Camp or the National Police Headquarters at Kacyiru, in any prosecution of these individuals following their return to Rwanda;

--The Government of Rwanda will grant access upon request, whether or not previously announced, to the U.S. Embassy and/or an agreed upon third party to visit Mssrs. Bimenyimana, Nyaminani and Karake during any period in which they are in official custody in Rwanda.

-- Given ongoing litigation in the U.S. related to the use of diplomatic assurances in immigration proceedings and the resulting uncertainty as to the state of U.S. law on this

issue, the United States wants the Government of Rwanda to be aware that there will remain some legal uncertainty that these individuals will ultimately be removed to Rwanda, even with an appropriately drafted set of written assurances.

-- Our current practice is to keep the content of diplomatic assurances such as these confidential. Given the uncertain state of U.S. law on this issue and the likelihood that we will need to respond to legal challenges brought by these individuals against their removal, we need to know what the GOR's views would be on sharing the content of any assurances received privately with a court, with these individuals and their representatives, and/or as part of a public record of proceedings.

9.(SBU) Please note that no information regarding the immigration proceedings involving these individuals, the claims they made therein regarding the treatment they faced if returned to Rwanda, or the fact that they were granted a deferral of removal as to Rwanda may be disclosed to or discussed with Rwandan officials.

10.(U)For further background or information, post may contact S/CT Hillary Batjer-Johnson at 647-4106, L/HRR Elizabeth Amory at 647-2731 or DRL/MLGA/Danika Walters at 647-4659.  
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